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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial report of States parties due in 1989

Addendum

PERU

[9 November 1992]

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Introduction

1. In accordance with article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 10 December 1984 and approved by the Government of Peru in Legislative Resolution No. 24815 of 12 May 1988, the Government of Peru is submitting as required the report on the measures which have been taken to give effect to its undertakings under this Convention.

2. This report gives details of the Peruvian Government's activities to include and implement the provisions of the Convention in domestic law. The Political Constitution of Peru is the main legal instrument which guarantees respect for the physical integrity of the individual, and it provides that "no one may be subjected to torture or to inhuman or degrading treatment".

3. Despite existing disadvantages as regards the practical application of the provisions laid down in the Convention, mainly due to the lack of specific provisions in our legislation, the Government of Peru maintains the firm aim of gradually incorporating into Peruvian legislation measures to prevent torture and other cruel, inhuman or degrading treatment or punishment, and to provide for the corresponding penalties and compensation.

4. It should be pointed out that Peru's current economic and social situation is critical and its political circumstances exceptional since the establishment of the Emergency Government for National Reconstruction under Decree-Law No. 25418.

5. As article 6 of the Decree-Law states, international covenants, treaties and conventions keep their full force; it should further be noted that the Government of Peru is committed to the establishment of democracy through elections for the Democratic Constituent Congress, thus providing a special opportunity to include the various articles of the Convention among the possible amendments to the Constitution.

PART I - GENERAL INFORMATION

A. Existing legal framework

Political Constitution of Peru

6. Respect for human rights in Peru is part of the obligations of the State and society as a whole; article 1 of the Constitution, which stipulates that the human being is the overriding concern of society and the State and that everyone has an obligation to respect and protect the individual, offers the best possible guarantee for living in freedom, peace and security. The ratification by the Constitution of the United Nations International Covenant on Civil and Political Rights, the American Convention on Human Rights of San José, Costa Rica, and other international human rights instruments, the creation of the National Human Rights Council, responsible for promoting,

coordinating and advising the Executive on the protection and full enjoyment of the fundamental rights of the individual (Supreme Decree No. 012-86-JUS) confirm the protective action of the State.

7. Peru's situation today is one of a country which, in addition to the economic and social crisis of the last 12 years, has been convulsed by terrorist violence in all areas of national life aimed at undermining the economic and social structures; this further results in the death of children, old people, women and other innocent victims of the terror unleashed by the rebellious armed groups such as Shining Path and the Tupac Amaru Revolutionary Movement which, over the last few months, have developed a cruel, disastrous and uncompromising subversive strategy against civilian society as a riposte to the latest measures of the Supreme Government in its endeavours to restore peace and order to the country. The Constitution provides that the situation described cannot be countered with a similar outburst of uncontrolled and illegal violence, nor can the intervention of the armed forces be prevented or ruled out since it is their duty to take control of internal order within the parameters laid down by the law. The Constitution consistently focuses on human rights as a means of protecting physical, psychological and spiritual attributes and assets and covers natural communities, the family, trade unions, corporations, minority groups and developing peoples. The Constitution comprises basic provisions to guide the legal and political system, with procedural machinery to protect its jurisdiction. We thus have a constitutional jurisdiction of freedom which concerns itself with the protection of fundamental rights and protects the individual from the arbitrary and unlawful acts of the authorities and private individuals. The organized constitutional jurisdiction refers to the persons on whom the State's authority rests and to conflicts among them, and the decisions which devolve on high-level officials.

8. It protects the right to declare laws unconstitutional and the public right of action laid down in the Constitution and ensures their validity, as well as that of the constitutional norms of the recourses of habeas corpus and amparo.

9. The Court of Constitutional Guarantees is also regarded as a monitoring body for the Constitution: in addition to observing unconstitutionality, it reviews decisions which override the recourses of habeas corpus and amparo once legal means are exhausted; and examines the form and procedure but does not touch the substance. The litigation procedure of the Judiciary Organization Act, which concerns acts of the public administration constituted by dispossession or disavowal as a result of infringement of constitutional rights, is spelled out in article 240, and is required to be invoked for any act or resolution that is final. These constitutional guarantees are supplemented by recourse to supranational jurisdiction for the defence of constitutional rights. In this context, a person who considers that his rights have been infringed - although not anyone indiscriminately but only the person concerned - may have recourse to the international courts or bodies constituted in accordance with treaties to which Peru has acceded. This procedure, which is the State's concession to the international community, only concerns fundamental rights which are inadequately protected by the State

and then only those recognized by the Constitution; an essential prerequisite is therefore the exhausting domestic remedies. Some articles of the Constitution relating to this matter are cited below:

"Article 2. Everyone has the right:

1. To life, to a name, to physical integrity and to the unrestricted development of his personality. An unborn child shall be deemed to have been born in respect of all matters which are to his benefit.

2. To equality before the law, without discrimination of any kind on grounds of sex, race, religion or language.

...

7. To the inviolability of the home. No one may enter it or conduct inquiries or searches without the permission of the person who lives there or a legal warrant, except in the case of flagrante delicto or imminent danger of an offence being committed. Exceptions for reasons of health or serious risk are governed by the law.

...

20. To personal freedom and security. As a result:

(a) No one shall be obliged to do what the law does not require, or prevented from doing what it does not prohibit.

(b) No form of restriction of personal freedom shall be permitted, except in the cases provided for by law. Slavery, servitude and the slave trade in any form are abolished.

(g) No one may be arrested without a substantiated written warrant from a judge, or from the police authorities in a case of flagrante delicto. In all cases the detainee shall be brought before the appropriate court within 24 hours or within the time taken to travel the distance. Exceptions shall be made for cases of terrorism, spying and illegal drug trafficking, in which the police authorities may remand the suspected offenders in custody for a period of not more than 15 days, and are responsible for notifying the Office of the Public Prosecutor and the judge, who may assume jurisdiction before the period expires.

(h) Everyone shall be informed immediately and in writing of the cause of or reasons for his arrest. He has the right to communicate with and be advised by counsel of his own choosing from the time when he is summoned or arrested by the authorities.

(i) No one may be subjected to incommunicado detention unless it is essential for the clarification of an offence and is in the form and for the period provided for by law. The authorities shall be required to indicate without delay the place where the person arrested is being held, on pain of incurring responsibility.

(j) Statements obtained by violence and are not valid. Any one practising violence incurs personal responsibility.

(k) No one may be obliged to swear or compelled to declare or admit guilt in criminal proceedings against himself, or against his spouse or relatives to the fourth degree of consanguinity or the second degree of affinity.

(l) No one may be removed from the jurisdiction specified by the law or subjected to procedures other than those already established, or judged by emergency courts or special commissions set up for the purpose, whatever their designation.

Article 8. Children, young persons and the elderly are protected by the State from economic, bodily or moral destitution.

Article 11. Families without sufficient means have the right to bury their dead free of charge in public cemeteries.

Article 13. Social security is intended to cover the risks of illness, child-bearing, invalidity, unemployment, accidents, old age, death, being widowed or orphaned and any other contingency protected in accordance with the law.

Article 19. A disabled person who is unable to look after himself because of a physical or mental disability has the right to respect for his dignity and a legal regime for his protection, care, rehabilitation and security.

Article 22. ... The systematic teaching of the Constitution and of human rights shall be compulsory at all levels in civilian, military and police instruction centres.

Article 42. ... In all work relations any situation which prevents the exercise of the constitutional rights of the workers or which fails to recognize or detracts from their dignity shall be forbidden.

Article 47. It devolves on the State to decree measures regarding health and safety at work, in order to prevent professional risks and ensure the health and physical and mental integrity of workers.

Article 80. The defence of national sovereignty, the guarantee of the full enjoyment of human rights, the promotion of the general welfare on the basis of justice and the full and balanced development of the country and the elimination of all forms of exploitation of man by man and of man by the State are paramount duties of the State.

Article 105. The provisions of human rights treaties have constitutional status. They can be amended only by the procedure governing the reform of the Constitution.

Article 231. The President of the Republic, with the agreement of the Council of Ministers, may decree, for specific periods, in all or part of the territory and reporting to Congress or the Standing Committee, the states of emergency set out in this article:

(a) State of emergency: in the event of a disturbance of the peace or public order, a disaster or serious circumstances affecting the life of the nation. In this case, the constitutional guarantees of personal freedom and security, inviolability of the home, freedom of assembly and freedom of movement within the territory set out in article 2, paragraphs (7), (9) and (10) and in paragraph (20) (g) of the same article may be suspended. The penalty of banishment may not be imposed under any circumstances. The duration of the state of emergency shall not exceed 60 days. An extension requires a further decree. During the state of emergency, the armed forces shall take control of public order, if the President of the Republic so decides.

(b) State of siege: in the event of invasion, external war or civil war or imminent danger of their occurrence, with specification of the personal guarantees which continue in force. The period shall not exceed 45 days. If a state of siege is decreed, Congress shall automatically be convened. An extension requires the approval of Congress.

Article 233. The following are guarantees of the administration of justice:

7. Application of the criminal law most favourable to the accused in the case of doubt or conflict in time.

12. Invalidity of evidence obtained by unlawful coercion, threats or violence in any form.

16. State compensation for arbitrary detention, without prejudice to the responsibility of the person who orders such detention.

19. The right of prisoners and convicts to hygienic and properly-equipped establishments.

Article 234. No one may be subjected to torture or to inhuman or degrading treatment. Any person may request the judge to order an immediate medical examination of the detainee if he believes that the latter is the victim of ill-treatment.

The prison system is aimed at the re-education and rehabilitation of the prisoner and his reintegration into society in accordance with the Code of Execution of Punishments.

Article 235. There is no death penalty, except for high treason in the event of external war.

Article 250. The Office of the Public Prosecutor is independent and organized on a hierarchical basis. Its tasks are:

1. To take legal action, either of its own initiative or on application by the petitioner, in defence of legality, the rights of individuals and public interests under the protection of the law.

2. To ensure the independence of judicial organs and the proper administration of justice.

3. To represent the community in legal proceedings.

4. To act as ombudsman in relation to the public administration.

5. To supervise and take part in the investigation of offences starting at the police stage and institute criminal proceedings, either of its own initiative or on application by the petitioner.

6. To give advance opinions on all Supreme Court of Justice decisions in the cases provided for by law.

7. To perform such other functions as are indicated by the Constitution and the laws.

Article 295. Acts or omissions by any authority, official or individual which infringe or threaten individual freedom shall give rise to recourse to habeas corpus...

Article 296. The Court of Constitutional Guarantees is the monitoring body for the Constitution. It comprises nine members, three of whom are appointed by Congress, three by the Executive and three by the Supreme Court of Justice.

Article 298. The Court of Constitutional Guarantees has jurisdiction throughout the territory of the Republic. It has competence:

1. To declare, on application by a petitioner, the partial or total unconstitutionality of laws, legislative decrees, general regional regulations and municipal ordinances which infringe the form or substance of the Constitution; and

2. To examine, on appeal, decisions which refuse the right of recourse to habeas corpus and amparo, once legal remedies have been exhausted.

Article 305. Once domestic legal means have been exhausted, any one who considers that his rights as recognized by the Constitution have been infringed may have recourse to the international courts or bodies constituted under treaties to which Peru is a party.

Habeas Corpus and Amparo Act

10. This report also considers as part of the legal framework the provisions of the Habeas Corpus and Amparo Act, Acts No. 23506, article 12 (2), (3), (4), (5), (7), (10), (11), (13), (14) and (17), with its amendments and extensions, which establishes the applicability of this action when the following rights are infringed or threatened: the right to freedom of conscience and belief, the right not to be coerced into making statements, the right not to be forced to swear or compelled to declare or admit guilt in criminal proceedings against oneself, or against one's spouse, or against relatives to the fourth degree of consanguinity or the second degree of affinity, the right not to be exiled or banished or imprisoned in the absence of an enforceable judgement, the right not to be abducted, the right not to be arrested without a reasoned written warrant from a judge, or the police authorities in the case of flagrante delicto; the right to be brought before the appropriate court within 24 hours or within the time taken to travel the distance, in accordance with article 2 (20) (g) of the Constitution and the exceptions contained therein, the right not to be arrested for debt, except in cases of alimony, the right not to be held incommunicado unless it is essential for the clarification of an offence and is in the form and for the period provided for by law, in accordance with article 2, paragraph (20) (i) of the Constitution, the right of the individual to receive assistance from defence counsel of his own choosing from the time when he is summoned or arrested by the authorities, and the right of compliance with the appropriate formalities in proceedings against or arrest of the persons referred to in article 183 of the Constitution.

Legislative Decree No. 52, Organization Act of the Office of the Public Prosecutor

11. The Organization Act of the Office of the Public Prosecutor in its general provisions (art. 1) lays down that the Office is an independent State body, the main duties of which are to defend legality, the rights of citizens and the public interest, to represent the community in legal proceedings for the defence of the family, minors and legally incompetent persons and the public interest, and to supervise public morality, prosecute crimes and provide civil compensation. It also endeavours to ensure the prevention of crime within the limits resulting from this Act, the independence of judicial organs and the proper administration of justice and other functions as set out in the Political Constitution of Peru and the laws of the nation. These provisions are in accordance with the terms of article 250 of the Constitution.

Provisions of the Penal Code

12. Article 129 of the Penal Code, adopted by Legislative Decree No. 635, prescribes a prison sentence of not less than 20 years for any person who, with the intention of totally or partially destroying a national ethnic, social or religious group, commits any of the following acts: (1) murder of members of the group; (2) serious injury to the physical or mental integrity of members of the group; (3) subjection of the group to living conditions which are liable to result in its total or partial physical destruction;

(4) measures to prevent births within the group; (5) forced transfer of children to another group. The Penal Code also provides for penalties and sanctions for infringements or other illegal acts classified as crimes against life, the person and health (arts. 106 et seq.), and against the violation of personal freedom (arts. 151 et seq.). Decree-Law No. 25592 lays down in article 1 that an official or public servant who deprives a person of his freedom by ordering or performing acts which result in his disappearance where evidence thereof is duly available, shall be penalized by not less than 15 years' imprisonment and disqualification, in accordance with article 36 (1) and (2) of the Penal Code.

Provisions of the Judiciary Organization Act

13. Article 1 of the Judiciary Organization Act, promulgated by Legislative Decree No. 767, lays down the general principle that the power of administering justice flows from the people and is exercised by the Judiciary through its hierarchy of bodies, in accordance with the Constitution and the laws; it also states that, in the exercise of its functions, the Judiciary is autonomous with respect to political, administrative, economic and disciplinary matters and independent in its jurisdiction subject to the Constitution and its Organization Act (art. 2).

B. The Peruvian State as party to international instruments

14. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in New York on 10 December 1984, was signed by Peru on 29 May 1985 and approved by Legislative Resolution No. 24815 of 12 May 1988. The sixteenth of the General and Transitional Provisions of our Constitution constitutionally ratifies all the clauses of the International Covenant on Civil and Political Rights and the Optional Protocol thereto. It also ratifies the American Convention on Human Rights, or Pact of San José, Costa Rica, including articles 45 and 62 referring to the jurisdiction of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. These instruments contain provisions protecting the physical integrity of the individual, which to some extent figure in the national legislation and are included in the general laws of the Republic. Article 101 of the Constitution lays down that international treaties concluded between Peru and other States form part of national law. In the event of a conflict between the treaty and the law, the former prevails.

15. In addition to what has been said in this section, in accordance with the terms of the Constitution, the Congress of the Republic is empowered to promulgate laws and legislative resolutions and to interpret, amend or revoke those in existence (art. 186), while senators, deputies and the President of the Republic have the right to initiate laws and legislative resolutions. The Supreme Court of Justice, and regional government bodies in matters pertaining to them, also have this right (art. 190). The main international human rights instruments have been approved and ratified by the Peruvian Government, in accordance with the provisions mentioned in this section.

C. Authorities competent to deal with matters relating to the Convention

16. Article 232 of the Political Constitution of Peru lays down that the power of administering justice emanates from the people and is exercised by the courts and tribunals forming a hierarchical system contained in a single body, with the corresponding specializations and guarantees and according to the procedures laid down by the Constitution and the laws. The Constitution establishes the guarantees for the administration of justice (art. 233). The Office of the Public Prosecutor, as an independent body organized on a hierarchical basis, assists in this task with the obligation of taking legal action, either on its own initiative or on application by the petitioner, legal actions in defence of legality, the rights of individuals and public interests under the protection of the law (art. 250 (1)). The Ministry of the Interior and the Ministry of Defence provide the relevant information when situations involving human rights violations have to be clarified. It should be mentioned that the National Human Rights Council, set up by Supreme Decree No. 012-86-JUS of 5 September 1986, is responsible for advising the Executive on human rights.

D. Practical implementation of the Convention

17. The main problem confronting the Peruvian Government in the practical implementation of the Convention is the lack of specific provisions on the requirements of the Convention in our legislation. However, the provisions contained in the Penal Code are also applied for the purpose of preventing and punishing the offences set out in the Convention (offences against the person, life and health, offences against freedom and offences committed by public officials), in accordance with the Constitution (art. 234).

18. The Peruvian Government has been carrying out a forthright policy of reform of the national legal order, endeavouring little by little to include in its legislation precepts and provisions set out in the main international instruments, adapted to the economic, social and political requirements of the country and taking into account, inter alia, the climate of violence unleashed by subversive movements and drug-trafficking. Although specific provisions have not been issued in this regard, the Government has made undeniable efforts to legislate in this domain. The constant, never-ending variations in our political situation due to the strategies of the subversive groups and drug-trafficking, organized crime and the policies of previous Governments which did not bother to legislate in that regard, is a determining factor for the practical implementation and adaptation to our legislation of the provisions of the Convention.

E. Authorities competent to deal with complaints concerning torture

Judiciary

19. In accordance with the provisions of article 25 of the Judiciary Organization Act, adopted by Legislative Decree No. 767, the Judiciary performs the jurisdictional functions assigned to it by the Constitution and the laws, and is therefore regulated on an institutional basis with the autonomy, the powers and the limitations set out in the Organization Act. The Act lists bodies responsible for administering justice in the name of

the people and those which regulate, govern, control and carry out their own institutional and administrative activity. Article 26 of the above-mentioned text lists as the Judiciary's jurisdictional bodies: (1) the Supreme Court of Justice of the Republic; (2) the High Courts of Justice in the various judicial districts; (3) the specialized courts and courts of combined jurisdiction in the respective provinces; (4) the professional magistrates courts in the city or town of their jurisdiction; and (5) the magistrates' courts. Article 27 also states that the jurisdictional bodies perform their duties with the specializations and procedures laid down by the Constitution and the laws. The criminal divisions of the Supreme Court hear appeals in trials where the sentence has been handed down by the High Criminal Courts in criminal matters which fall within their jurisdiction; applications for judicial review in conformity with the law; disputes and transfer of jurisdiction in conformity with the law; investigation and trial of alleged offences by officials covered by article 183 of the Constitution, senior government procurators and magistrates, members of the Supreme Council of Military Justice and other officials indicated by the law in accordance with the relevant legal provisions; active and passive extraditions; and other actions provided for in the Act (art. 34). The Division of Constitutional and Social Law tries, inter alia, and in last instance, applications for habeas corpus and amparo (art. 35). The criminal divisions of the High Courts, inter alia, conduct trial hearings as established by the law (art. 41). The competent criminal courts, endowed with the powers and formalities, indicated by the law, deal with applications for habeas corpus (art. 50).

Office of the Public Prosecutor

20. As laid down in article 9 of the Organization Act of the Office of the Public Prosecutor, approved by Legislative Decree No. 52, the Office of the Public Prosecutor, in accordance with article 250 (5) of the Political Constitution, supervises and takes part in the investigation of offences starting at the police stage. The police carries out the investigation for this purpose. The Office of the Public Prosecutor intervenes by guiding the police as to the evidence which needs to be gathered and ensuring that it carries out the relevant legal steps for the timely practice of criminal proceedings. As soon as the Provincial Procurator for Criminal Matters is informed that the police have arrested a person alleged to have committed an offence, he contacts the detainee, either personally or through his deputy or duly authorized assistant, so as to ensure the detainee's right of defence and the other rights recognized by the Constitution and the laws. The Office of the Public Prosecutor is in charge of public criminal proceedings, which it institutes on its own initiative, on the application of the injured party or in response to a public action, in the case of an offence which has just been committed or offences against which the law expressly requires it to proceed.

Military jurisdiction

21. In stating that no independent jurisdiction exists or may be established with the exception of arbitral and military jurisdiction, the Political Constitution of Peru recognizes military criminal jurisdiction. This acknowledgement is reinforced by the terms of article 282 of the Constitution, which states that in cases of offences committed in relation with their duties

members of the armed forces are subject to military jurisdiction and to the Code of Military Justice, the provisions of which do not apply to civilians, except as the Political Constitution of Peru provides in article 235 or the provisions issued in this respect by the Government of Peru state. As a result, military criminal jurisdiction constitutes a guarantee of the administration of justice and is applied to members of the armed forces and the police in cases of offences committed in relation with their duties and in accordance with the terms of the Code of Military Justice.

PART II - INFORMATION CONCERNING EACH OF THE ARTICLES IN PART I OF THE CONVENTION

Article 2

22. As described in detail in the section on general information, our national legislation contains constitutional, legislative, legal and administrative provisions to prevent acts of torture throughout the territory of the Republic, starting from the premise contained in the Constitution (art. 1), which establishes that the human being is the overriding concern of society and the State and that everyone has an obligation to respect and protect the individual. The constitutional provisions concerning personal freedom and security are the main guarantees for the prevention of torture in our country. As a result, Peru as a State party, with the restrictions for its practical implementation of the constitutional stipulations referred to in part I, section D, has enacted specific provisions to prevent torture. No exceptional circumstances are taken into consideration, such as a state or threat of war, domestic political instability or any other public emergency, to justify torture. Article 234 of the Constitution lays down that no one may be subjected to torture or to other inhuman or degrading treatment. It adds as a guarantee for compliance that anyone may request a judge to order an immediate medical examination of the detainee if he believes him to be the victim of ill-treatment. It should be pointed out that there are no legislative, administrative or legal provisions which justify torture when it is committed on orders from a higher official.

Article 3

23. First of all, it may be noted that, in conformity with the provisions of articles 108 and 109 of the Political Constitution of Peru, the State recognizes political asylum. It accepts the classification of refugee given by the Government granting asylum. If the expulsion of a political refugee is decreed, the person is not handed over to the country whose Government is persecuting him. Extradition is only granted by the Executive, following a report by the Supreme Court. Extradition excludes political offences or related acts; acts of terrorism, assassination and genocide are not considered as such. Extradition is refused if there is sufficient reason to believe that it has been requested so as to persecute or punish an individual on grounds of race, religion, nationality or opinion. The provisions of article 2 (9) of the Constitution should be recalled, which establish that everyone has the right to choose freely his place of residence, to have freedom of movement in the national territory and to leave and enter the national territory, unless health restrictions exist.

24. Article 6 of Act No. 24710 lays down that extradition is not permissible, inter alia, if the offence is purely military, anti-religious, political, or press- or opinion-related. The fact that the victim of the punishable act in question has political duties, does not in itself justify the description of the offence as political; nor does the fact that the perpetrator has political duties make the act political. The second paragraph of article 7 of the Act lays down that extradition shall not be granted if there is serious reason to believe that the application for extradition, citing an ordinary offence as justification, has been submitted with the aim of persecuting or punishing an individual on grounds of race, religion, nationality or political opinion, or that the situation of that individual would be exposed or aggravated by one or other of those grounds. If Peru refuses the extradition, it may bring the accused to trial, for which purpose evidence can be requested from the applicant State (art. 8).

25. Generally speaking, extradition in our national law is a procedure exceptionally recognized on a reciprocal basis within a context of respect for human rights and with the restrictions contained in articles 6 and 7 of Act No. 24710.

Article 4

26. In Peru, as a matter of priority the Constitution protects the right to physical integrity, and torture is expressly forbidden (Constitution, arts. 2 (20) (j) and 234). In addition, it is subject to criminal penalties inasmuch as it comes under the general headings of crimes against life, the person and health and offences committed by public officials (Penal Code, arts. 106 et seq. and 376). Decree-Law No. 25662 lays down that members of the Peruvian National Police, in active service or discharged following disciplinary measures, who commit punishable acts classified as ordinary offences, shall be liable to double the maximum penalty established by the Penal Code or special laws. It also states that retired members of the National Police who commit punishable acts classified as ordinary offences shall be liable to the maximum penalty, increased by half. The Code of Execution of Punishments, adopted in Legislative Decree No. 654, lays down in article III of the Preliminary Title that the execution of a penalty and the imprisonment of defendants shall not be accompanied by torture or inhuman or degrading treatment or any other act or procedure which impairs the dignity of the prisoner. Prison treatment in our country is aimed at the rehabilitation of the prisoner and respects human rights. Any transgression of the norms which adversely affects the prisoner entitles him to submit a complaint to the prison director, pursuant to article 14 of the Code of Execution of Punishments; if he does not receive satisfaction, the prisoner may have recourse by any means to the representative of the Office of the Public Prosecutor, for which purpose the prison administration shall furnish him with the appropriate facilities.

Articles 5, 6, 7 and 8

27. Article 1 of the Penal Code, adopted in Legislative Decree No. 635, lays down as a territorial principle that Peruvian criminal law shall apply to anyone committing a punishable act in the territory of the Republic, subject to the exceptions laid down in international law. The provision extends to

punishable acts committed in public vessels or aircraft, whether national or private, on the high seas or in air space over which no State exercises sovereignty.

28. Article 2 of the Penal Code adds that a principle of the geographical implementation of criminal law is that it applies to any offence committed abroad by a public official or servant in the course of his duties when his action jeopardizes public safety and peace, if its effects occur in the territory of the Republic, when he does injury to the State and the national defence, the State authorities and the constitutional or monetary order or when the offence is perpetrated against or by a Peruvian and is classified as extraditable under Peruvian criminal law, provided that it is also punishable in the State in which it was committed and the perpetrator enters the territory of the Republic by some means, and when Peru is required to impose punishment in accordance with international treaties.

29. The Peruvian Penal Code also provides for the authority to penalize an individual who has not been extradited by stating in article 3 that this authority applies when, following an application for extradition, the individual is not handed over to the competent authority of a foreign State. Mention should be made of the exception to the additional principles of the Penal Code set out in article 4, to the effect that the provisions contained in articles 2 (2), (3), (4) and (5) are not applied when criminal proceedings have been extinguished in accordance with one or other body of legislation, in the case of political offences or related acts, and when the accused has been acquitted abroad or the convicted person has completed his sentence or when the sentence is time-barred or remitted. The possibility exists of reinstituting proceedings if the accused has not served the full sentence; proceedings may be reinstituted in the courts of the Republic of Peru but the part of the sentence served will be counted. Lastly, article 5 of the Penal Code alludes the principle of geographical location, when it lays down that the place where an offence was committed is that in which the perpetrator or participant has acted or failed in his obligation to act or in which the effects occur.

30. Active extradition takes place if a judge or correctional court (the criminal division, according to the new Judiciary Organization Act) considers that an absent or defaulting suspect should be extradited, for which purpose extradition interlocutory proceedings will be initiated consisting of the complaint, the initiating order, an official report and an order by the judge indicating that the person is present in the country. The file is then referred to the High Court and subsequently to the Supreme Court. With the evidence for and against the accused, together with the extradition treaty applicable to the case and any other document requested by the prosecution and/or the defence, the proceedings are remitted to the Procurator for a decision on admissibility. The case is then referred back to the Supreme Court, which pronounces in plenary as to whether or not extradition is justified; if it is, the matter is brought before the Ministry of Justice for a decision authorizing the extradition.

31. Passive extradition takes place when an application is made to Peru for the extradition of a person who is being investigated, tried or sentenced for an offence. Consideration will be given, in respect of any application for

extradition, to the existence of guarantees for the fair administration of justice in the requesting country and to whether an extradition request previously submitted by the applicant State to a third State has been rejected because it was considered to have political implications. The following procedure applies in this situation: once the document applying for the extradition has been submitted to Peru through the Ministry of Foreign Affairs, it is transmitted to the Supreme Court. The investigating magistrate, who opens an investigation to initiate extradition proceedings, issues a writ and proceeds to order the arrest of the person, giving the date and time of formalities, and if he is in court summons the person and the diplomatic representative of the requesting country. The person may be accompanied by a lawyer and submit such evidence as he considers appropriate. The magistrate may, at the request of one of the parties or of his own initiative, call for the submission of more documents so as to have a better basis on which to take a decision. The magistrate decrees whether or not extradition is admissible. The case is brought before the court, which refers it to the Higher Government Procurator for his opinion, which is transmitted to the Court. The Senior Government Procurator gives his report, whereupon the case is transmitted to the Supreme Court for a resolution. Once the resolution has been handed down by the Supreme Court, all the proceedings are forwarded to the Executive through the Ministry of Justice for a decision.

32. To all the above and considering the comments already made, we may add that if torture and other cruel, inhuman and degrading treatment are not classified as such in our criminal law, they are encompassed, depending on their degree and nature, by the crimes against life, the person and health, the crime of genocide, crimes against freedom and those committed by public officials. In addition, the provisions mentioned in this section are applied to persons who physically harm others, and, as has been said, clear procedures exist for punishing such acts in conformity with the Constitution and the general laws of the Republic and in accordance with the main international human rights instruments. It is important to mention that among the general guidelines of our present Government's domestic and international policy, special attention is being paid to human rights; this being the case, the approval of the Convention by the Peruvian Government indicates continuity as far as respect for its stipulations is concerned.

Article 9

33. Article 3 of Act No. 24710 provides that extradition is exceptionally recognized on a reciprocal basis in a context of observance of human rights and with the restrictions laid down in articles 6 and 7. As noted in the foregoing paragraphs, extradition is an instrument of international cooperation in which reciprocity has been accepted in the modern world and particularly in the Americas, not only because it is an ideal means of providing legal assistance to countries which are reluctant to accept extradition, but also because it is an aspect of judicial cooperation and forms part of the services rendered by States in international relations. As part of this elementary rule of reciprocity, article 12 of the above-mentioned Act states that extradition shall be requested through diplomatic channels by

the Government of the State where the charge or sentence took place. Article 14 adds that if a variety of offences are involved, priority will be given to: (1) the application of the State where the crime carrying the heaviest penalty has been committed; (2) in the event that penalties are equally heavy, to the State which first applied for extradition; (3) when the applications are simultaneous, to the State of origin of the person sought; and (4) failing which, to that of the domicile of the criminal. In other cases, the order of priority will depend on the discretion of the State.

34. The application for extradition must be accompanied by the following documents: (a) a copy of the sentence or prison decision handed down by the competent judge, with an indication of the offence and the declaration of the summons of the person charged or his failure to appear, together with the place and date on which this occurred; (b) a full copy of the criminal law texts concerning the offence committed, the penalty applicable and the prescription of proceedings or penalties; (c) evidence of the facts; and (d) evidence of the participation of the person in question (art. 17). Articles 18 and 19 of the above-mentioned Act also provide that the copies must be authentic, and cannot be replaced by references made in the documents nor by a mere assertion of their applicability by a judicial or diplomatic authority. The application, like all the documents, must be accompanied by a Spanish translation. The processing of the application through the diplomatic channel constitutes sufficient proof of the authenticity of the documents submitted.

35. In order to comply with the principle of mutual judicial assistance, Peru has signed bilateral and multilateral international treaties on extradition as follows:

Bilateral treaties

Convention on Extradition and Declaration pertaining thereto, with the United Kingdom of Belgium, in force since 23 October 1890 and amplification of article 2 in force since 29 August 1962;

Treaty for the Extradition of Criminals with the United States of Brazil, in force since 22 May 1922;

Treaty of Extradition with Chile, in force since 31 July 1936;

Treaty of Extradition with the United States of America, in force since 23 January 1901;

Convention for the Mutual Extradition of Criminals with the French Republic, in force since 19 January 1876;

Treaty of Extradition with the United Kingdom of Great Britain, signed on 26 January 1904, and extended to include the States of Kenya, Malawi, Fiji and the Commonwealth of the Bahamas after they obtained their independence.

Multilateral treaties

Treaty on International Penal Law, signed in Montevideo on 23 January 1889;

Agreement on Extradition, signed in Caracas on 18 July 1911, and Interpretative Agreement signed in Quito on 11 August 1935;

Convention on Territorial Asylum, signed in Caracas on 28 March 1954 at the Tenth Inter-American Conference.

36. Peruvian criminal law is binding and applied within the territorial limits of the State which promulgates it; this is the result of the application of a set of legal principles which delimit the geographical area of validity of criminal law. It is a fact that criminal law is particularly territorial, but it would be a mistake to study this aspect as though it was a question of the effects of criminal law in relation to the territory, since the legal area of geographical validity is much more extensive, in the strict sense, and delimited by the frontiers. However, the extraterritorial nature of criminal law is never jurisdictional but only substantive; our State will therefore never apply foreign criminal law within the country. The binding effect of Peruvian criminal law derives from the 1979 Constitution, article 2 (2), which lays down that everyone has the right to equality before the law without discrimination of any kind based on sex, race, religion, opinion or language; article 187 of the Constitution also states that special laws may be promulgated as required by the nature of things but not on account of differences between individuals.

Article 10

37. The last paragraph of article 22 of the Political Constitution of Peru lays down that the systematic teaching of the Constitution and human rights is compulsory in civil and military education centres and at all levels. Article 80 of the Constitution also states that it is a prime duty of the State to guarantee the full enjoyment of human rights. In this fundamental context, the Ministry of Justice, through the National Human Rights Council, published in June 1990 the full text of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the text of the Inter-American Convention to Prevent and Punish Torture, which were distributed to officials of the public administration and the administration of justice as well as the armed forces and the police force.

38. The Office of the Public Prosecutor has adapted its institutional organization to deal with human rights violations by public officials as well as violations committed by terrorist criminals and drug-traffickers and has set up the Special Procurator's Office for the Ombudsman and Human Rights and the Ad Hoc Office of the Procurator for cases of terrorist crimes; by their very nature, these offices act according to their jurisdiction. It should also be mentioned that the attacks on society carried out by criminal terrorist organizations since 1980 involve situations of extreme violence which principally affect the depressed sectors of the population, and include murders, mutilation, torture and kidnappings; persons who take part in them are therefore liable to criminal prosecution.

39. Since April 1989, the Special Procurator's Office for the Ombudsman and Human Rights has been performing its duties in liaison with a variety of institutions specializing in the defence of human rights.

40. Staff from the Special Procurator's Office for the Ombudsman and Human Rights constantly travel within Peru for the purpose of investigating cases of violations of the Convention in Cuzco, Ayacucho, Puno, San Martín and Junín.

41. Provincial procurator's offices for the Ombudsman and Human Rights are operating in the following departments of Peru: Piura, La Libertad, Ancash, Huánuco, Callao, Junín, Ayacucho and Arequipa, which along with the senior government procurators coordinate with the Special Procurator's Office in Lima. In some places where the system has not yet been implemented, coordination is with the procurator's offices for the prevention of crime, as in the departments of Huancavelica, Puno and Apurimac.

42. Where the obligations of education and information in this regard are concerned, the Special Procurator's Office has given lectures such as the following:

"The Office of the Public Prosecutor and the Office of the Ombudsman" in Huancayo-Junín;

"The Office of the Ombudsman and human rights", for the Peruvian Navy;

"The Office of the Public Prosecutor, the National Police and the peace process", in Ayacucho;

"The Office of the Public Prosecutor and human rights", for the legal corps of the Peruvian Air Force;

"The Office of the Public Prosecutor, the Office of the Ombudsman and human rights", for the general officers of the Armed Forces.

43. The National Institute of the Public Prosecutor's Office has since 1989 been engaged in fruitful activity with scant resources, with regard to which it may be mentioned that during the period 1989-1991 it received cooperation from the Andean Commission of Jurists.

44. It should be pointed out that in the educational events organized by the Institute special importance was given to the subject of human rights in relation to the Convention:

In July 1989 a forum was held on "Constitutional guarantees and the public right of action", stressing habeas corpus as a means of controlling violations of the Convention;

In September 1989 a symposium was held on "Human rights and the Ombudsman" also including topics clarifying aspects of the Convention;

The Institute organized a round-table on the Office of the Public Prosecutor for the Inca Garcilazo de la Vega University including the topic "Office of the Public Prosecutor, the Ombudsman and human rights", during which the Convention was distributed. This event took place in September 1989;

In October 1989, Dr. Héctor Gros Espiell, an authority on matters relating to the Convention according to international procedural law and human rights, gave a lecture entitled "Supranational institutions in Peruvian law";

Together with the Andean Commission of Jurists a seminar was held in October 1989 on "Diagnosing violence in the country, administration of justice and military courts";

In December 1981, a delegation of procurators took part in the "First national interdisciplinary course on human rights", organized by the National Human Rights Council;

In March 1990, together with the Andean Commission of Jurists, a seminar was held on "Individual freedom and rights of detainees";

The same topic was discussed in Cuzco in May 1990 with the Andean Commission of Jurists;

Also with the Andean Commission of Jurists, a seminar was held on "Administration of justice and individual rights" in June 1990;

In July 1991 the "First dialogue with procurators on international humanitarian law and human rights" including aspects of the Convention, was held;

In June 1990, part of the seminar on "Scientific progress in expert evidence" touched on aspects of the Convention under the heading of "Medicine and forensic pathology";

In September 1990 an interregional seminar with the Andean Commission of Jurists was held in the city of Chiclayo on "Individual freedom and rights of detainees";

In November 1990, with the Andean Commission of Jurists, a seminar was held on "Forensic investigation in critical situations", which analysed the subject with specific reference to torture and human rights;

A seminar on "Individual freedom and warranty proceedings" was held in Ayacucho in February 1991, with the Andean Commission of Jurists;

In April 1991, also with the Andean Commission of Jurists, a seminar was held on the "Office of the Ombudsman" with specific analyses of the situation of human rights in Peru and their protection, including the rights set out in the Convention;

In November 1991 a seminar was held on the "Role of the Office of the Public Prosecutor in the Code of Criminal Execution", a set of regulations designed to prevent torture and inhuman treatment in implementation of the Convention;

In June 1992, the seminar on "Topics of constitutional law and human rights" included analysis of the Office of the Public Prosecutor as Ombudsman and human rights, stressing the organizational aspect, which affects the efficient implementation of the Convention.

45. These academic activities were organized in particular for members of the Office of the Public Prosecutor in Lima and other Peruvian cities. Procurators from the various judicial districts took part in activities outside Lima, and more than 50 per cent of representatives of the national total received educational information.

Articles 11, 12, 13, 14, 15 and 16

46. Article 2 (20) of the political Constitution of Peru lays down the right to personal freedom and security. As a result, no one shall be obliged to do what the law does not require or prevented from doing what it does not prohibit; no form of restriction of personal freedom shall be permitted, except in the cases provided for by law; it also states that no one shall be tried or sentenced for an act or omission which at the time it occurred was not expressly and unequivocally classified by the law as a punishable offence, or sanctioned with a penalty not provided for by the law. The Constitution also establishes in the article in question that no one may be arrested without a substantial written warrant from a judge, or from the police authorities in a case of flagrante delicto. In all cases the detainee shall be brought before the appropriate court within 24 hours or within the time taken to travel the distance. Exceptions shall be made for cases of terrorism, spying and illegal drug-trafficking in which the police authorities may remand the suspected offenders in custody for a period of not more than 15 days and are responsible for notifying the Office of the Public Prosecutor and the judge, who may assume jurisdiction before the period expires. The article in question also states that everyone shall be informed immediately and in writing of the cause or reasons for his arrest. He has the right to communicate with and be advised by counsel of his own choosing from the time when he is summoned or arrested by the authorities. Nobody may be subjected to incommunicado detention unless it is essential for the clarification of an offence and is in the form and for the period provided for by law. The authorities shall be required to indicate without delay the place where the person arrested is being held, on pain of incurring responsibility. Statements obtained by violence are not valid. Anyone practising violence incurs criminal liability. No one may be obliged to swear or compelled to

declare or admit guilt in criminal proceedings against himself, or against his spouse or relatives to the fourth degree of consanguinity or the second degree of affinity.

47. The constitutional norms referred to in the previous paragraph are basically in accordance with article 232 of the Constitution, which lays down that the power of administering justice emanates from the people and is exercised by courts and tribunals forming a hierarchical system contained in a single body with the corresponding specializations and guarantees and according to the procedures laid down by the Constitution and the law. This is reinforced by the guarantees for the administration of justice set out in article 233, which describes legal and procedural machinery for guaranteeing the fair administration of justice in the case of every person who has for any reason been subjected to any form of arrest, detention or imprisonment in any part of the national territory. This constitutional guarantee of the administration of justice is given its maximum expression in article 234 of the Constitution, where it is established that no one may be subjected to torture or to inhuman or degrading treatment and that any person may request the judge to order an immediate medical examination of the detainee if he believes that the latter is the victim of ill-treatment. In addition to supervising the personal guarantees of the members of society, the Public Prosecutor in his role as Ombudsman undertakes to represent society in proceedings for the defence of the rights of individuals, preventing crime and denouncing those who transgress the law and the national legal order.

48. In reforming its duties, the National Penitentiary Institute complies with the provisions, conclusions and recommendations of the United Nations for the prevention of crime, as laid down in article X of the Preliminary Title of the Code of Execution of Punishments. This institution provides the prison population with services of legal, medical, psychological, social and religious assistance. Training programmes for prison personnel (agents and officers), which are the responsibility of the National Centre for Criminological and Penitentiary Studies, include a course of constitutional law which incorporates the teaching of the fundamental rights of the individual, with the introduction of a new human rights curriculum.

49. Any person who considers that the rights as mentioned in this section have been impaired may make an application for habeas corpus in accordance with the formalities and procedures set out in Act No. 23506, with its amendments and extensions. During the period of suspension of constitutional rights, no applications for habeas corpus or amparo may be submitted in respect of the guarantees and rights set out in article 231 of the Constitution, which are the rights of personal freedom and security, the inviolability of the home, freedom of assembly and freedom of movement within the territory of Peru. It is appropriate to mention that, when there is a state of emergency or disturbance of the peace or the internal order, disaster or serious circumstances affecting national life, the President of the Republic, with the agreement of the Council of Ministers, is empowered to decree the suspension of the above-mentioned guarantees for a specific period in all or part of the territory. Any person who considers that his constitutional rights have been violated may also have recourse to the United Nations Human Rights Committee, the Inter-American Commission

on Human Rights, the Organization of American States and all bodies with treaty status in accordance with the provisions of articles 101 et seq. of the Constitution.

50. Individuals who for various reasons have suffered torture at the hands of public officials shall be compensated in accordance with the procedure set out in the Penal Code, the Code of Penal Procedure, the Civil Code, the Code of Civil Procedure and the Code of Military Justice. Mention should be made of the requirements of article 233 (5) of the Constitution, which prescribes as a guarantee of the administration of justice compensation for legal errors committed in criminal proceedings in the form specified by law. Due note should be taken of the fact that Legislative Decree No. 742 provides that members of the Peruvian National Police subject to military jurisdiction shall be confined in prison establishments belonging to the National Penitentiary Institute. This regulation does not distinguish such persons from other criminals in that a policeman who commits a crime is treated in the same way as any ordinary offender.

51. With a view to regulating the relations of the Military Political Command in the areas declared to be in a state of emergency with the various authorities in their jurisdiction, Legislative Decree No. 749 was issued, and among other equally important conditions set out provisions for assuming the initiative in coordinating activities to ensure the participation of the public and private sectors located in the emergency zone in implementing the plans and directives approved by the Executive, so as to achieve nationwide peace and suppress terrorist crime and drug-trafficking. As part of the policy of revision and amendment of criminal legislation, Decree-Law No. 25499 was promulgated, laying down the terms on which the benefits of reduction, exemption, remission or attenuation of the sentence will be granted to those who have committed terrorist offences. As a means of securing nationwide peace and thus reducing to some extent offences committed against nationals or foreigners as individuals, several articles of Act No. 25103 have been amended so as to adjust the national pacification policy to the aims of suppressing subversion and illegal drug-trafficking.

52. Decree Law No. 25592 lays down that a public official or public servant who deprives a person of his freedom by ordering or performing acts which result in his disappearance, where evidence is duly available, shall be penalized by not less than 15 years' imprisonment and disqualification in accordance with article 36 (1) and (2) of the Penal Code. This decree further states that the offices of the Peruvian National Police throughout the territory of the Republic shall immediately inform the provincial procurator of any disappearances reported in their area. It also requires the offices of the Peruvian National Police to keep a register of reports concerning disappearances, with information enabling the missing persons to be identified. It is appropriate to mention Ministerial Resolution No. 1302/DE/CG of 11 November 1991, which states that in areas declared to be in a state of emergency, the officers on duty in the military installations and any other detention centre shall be those who, in addition to their duties, receive and directly deal with the procurators and provide them with facilities for performing their functions in accordance with the law. With regard to this policy of preventing the crime of torture, the Office of the Government Procurator, in resolution No. 342-92-NP-FN, has

provided that the provincial procurators in criminal matters and the provincial procurators of combined jurisdiction shall keep a register of reports concerning disappearances.

53. In addition to what has been said in this report, it is the firm intention of the Emergency Government for National reconstruction, along with a number of private bodies concerned with the protection of human rights, to submit proposals to the forthcoming Democratic Constituent Congress, so that when the new Constitution is drafted it will include provisions on the requirements set out in the Convention.